

DOCUMENT RESUME

02975 - [A1953070]

[Protest against the Evaluation and Method of Evaluation of Two Proposals]. B-188454. July 7, 1977. 4 pp.

Decision re: First Harles Management Corp.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (856).

Organization Concerned: Small Business Administration.

Authority: 56 Comp. Gen. 62. 54 Comp. Gen. 783. B-186125 (1976).
B-184402 (1975). B-185339 (1976). B-162558 (1975). B-181539 (1974).

The protester objected to the evaluation and the method of evaluation of two proposals for technical and management assistant services. The agency's use of the same evaluators to review and rank proposals submitted for possible award in two separate areas was not unfair. The procuring agency has the responsibility for determining the relative merits of proposals. The record provided no basis to conclude that the awards were not in accord with the request for proposals and based on the reasoned judgment of the evaluators. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:
B-188454

DATE: July 7, 1977

MATTER OF:
First Harlem Management Corporation

DIGEST:

1. Protester contends that agency's use of same evaluators to review and rank proposals submitted for possible award in two separate areas was unfair because competing firms' proposals were automatically ranked identically in both areas. When firms submit substantially identical proposals for consideration in multiple areas, about the same ranking of proposals should reasonably be expected and in circumstances GAO is unable to find agency's evaluation procedure unfair or unreasonable.
2. Protester argues that its proposal should have been rated higher in Government contracts, special services, and production and engineering. Procuring agency has responsibility of determining relative merits of proposal and such determination must not be disturbed unless arbitrary or in violation of law. Record provides no basis to conclude that awards were not in accord with RFP and based on reasoned judgment of evaluators.

First Harlem Management Corporation (FHMC) protests the evaluation and the method of evaluation of two proposals submitted in response to request for proposals (RFP) No. SBA-7(i)-MA-77-1 issued by the Small Business Administration (SBA) for technical and management assistance services to eligible individuals and enterprises in the New York District (area 3) and the New York Region (area 4).

The RFP provided that proposals would be evaluated on a point system pursuant to the following evaluation criteria:

- "1. QUALITY, EXPERIENCE AND CAPABILITY OF STAFF
OFFEROR INTENDS TO ASSIGN TO THIS PROJECT40 points

"The proposal will present in detail the staffing offeror will assign to the project. This will include biographical data on professionals. The biographical data on the proposed Project Director (Part VIII) should include information as to his experience in consulting and supervising.

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"2. PREVIOUS EXPERIENCE AND EFFECTIVENESS IN PERFORMING SERVICES40 points

"Offeror must list: (A) List of various clients presently being served; (B) List of clients served in the immediate prior year with specific examples of work performed and the results of this service. Offeror should narrate business history, with emphasis on dealing with small firms.

"For both (A) and (B), offeror should narrate experience with business concerns owned and controlled or operated by minorities and disadvantaged persons, i.e., low income individuals--particularly, those located in urban or rural areas with high unemployment.

"3. MAN-DAY PRICING (Not to include Travel and Per Diem or Final Report)20 points"

The first two criteria were rated on matters including ability and experience in Government contracts, special services, and production and engineering.

Three evaluators from areas other than 3 and 4 reviewed and scored the proposals according to the above evaluation scheme. In area 3, Fischbach, McCoach & Associates, Inc. (Fischbach), received the highest score (86.6) and the awardee, Don Aux Associates, Inc., received the second highest score (85.1). FHMC received the sixth highest score (76.1). In area 4, Fischbach received the highest score (79.9) and was awarded the contract while FHMC received the fifth highest score (66.1).

FHMC contends that SBA's use of the same evaluators in areas 3 and 4 is unfair because it automatically resulted in proposals being ranked identically in both areas. In response the SBA argues, citing several of our decisions, that the determination of the relative merits of proposals and the evaluation procedure utilized is the responsibility of the contracting agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. SBA also notes that we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals. Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 CPD 386.

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As here, when firms submit substantially identical proposals for consideration in multiple areas, it is not unreasonable that about the same ranking of proposals in each area could result. Under the circumstances, we are unable to find that SBA's use of the same evaluators was unfair or unreasonable. See Design Concepts, Inc., B-186125, October 27, 1976, 76-2 CPD 365 (we found no basis to object to the fairness of evaluation method--where only one of six evaluators reviewed each proposal--because the RFP made no commitment regarding the number of evaluators to review each proposal and each evaluator operated under the same evaluation criteria and instructions).

FHMC generally contends that, as a highly qualified minority firm submitting an excellent proposal, it should have received the highest evaluated score since 80 percent of the RFP's evaluation criteria related to an offeror's ability and experience in problems of minority companies. FHMC argues that the evaluation of its proposal was incorrect for these reasons: (1) from the information submitted in FHMC's proposal, primarily resumes of employees and consultants to be used on the SBA contract, the evaluators would be unable to determine the extent of each individual's SBA contract experience; (2) the evaluators considered FHMC's proposal weakest in the area of Government contracts; however, FHMC contends that its record in obtaining Government contracts for clients far exceeds the record of firms higher rated; and (3) FHMC contends that its experience and personnel match those of the competition in the areas of special services and production and engineering.

The SBA argues, citing our decision in Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404, that although it is clear that the protester does not agree with the evaluation of proposals and would not have rated the proposals in the respective areas as SBA did, that fact alone does not render the evaluation invalid or improper. SBA again argues, citing Rigbins & Williamson Machine Company, 54 Comp. Gen. 783 (1975), 75-1 CPD 168; Field Maintenance Services Corporation, B-185339, May 28, 1976, 76-1 CPD 350; Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175; Training Corporation of America, Inc., B-181539, December 13, 1974, 74-2 CPD 337, that procuring agencies are vested with a reasonable range of discretion in evaluating and determining the relative merits of competing proposals and such determinations will not be questioned unless they are clearly arbitrary, unreasonable, or in violation of procurement statutes and regulations. SBA concludes that the protester has not provided any evidence that the evaluation was not

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conducted in accordance with applicable requirements or was based on anything other than the reasoned judgment of the evaluators. It is SBA's opinion, therefore, that the awards made for areas 3 and 4 were in conformance with the provisions of the solicitation, applicable requirements of law and our decisions.

The RFP clearly indicated the importance of an offeror narrating its experience and the experience of its staff in matters concerning businesses owned and controlled or operated by minority and disadvantaged persons. To the extent that FHMC failed to provide information concerning the experience of its staff on similar SBA contracts, it assumed the risk of receiving a rating lower than it otherwise may have received.

At issue here is the reasonableness of SBA's evaluation of FHMC's proposal relative to other offerors. It is not the function of our Office to evaluate proposals in order to determine which should have been selected for award. As stated above, the determination of the relative merits of proposals is the responsibility of the contracting agency and such determinations are entitled to great weight and must not be disturbed unless shown to be arbitrary or in violation of procurement statute or regulation. Tracor, Inc., supra. Our review of the record provides no basis to conclude that the awards were not in accord with the RFP and based on the reasoned judgment of the evaluators.

Protest denied.


Deputy Comptroller General
of the United States